STATE OF MAINE
PUBLIC UTILITIES COMMISSION
18 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0018

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THOMAS L. WELCH
CHAIRMAN

WILLIAM M. NUGENT
HEATHER F. HUNT
COMMISSIONERS

February 12, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CC Docket No. 96-262 ACCESS CHARGE REFORM

Dear Mr. Caton:

Enclosed is an Original and twelve copies of the Reply Comments of the Maine Public Utilities Commission in the above docket.

Please date stamp one copy and return in the enclosed self-addressed stamped envelope.

Sincerely,

Joel Shifman

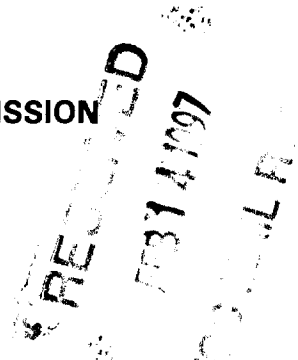
No. of Copies rec'd 0+11
List ABCDE

PHONE: (207) 287-3831 (Voice)

FAX: (207) 287-1039

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554



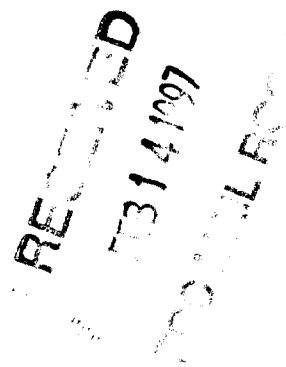
In the Matter of	)	
	)	CC Docket No. 96-262
Access Charge Reform	)	
	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Commission Comments have been furnished to the parties on the attached service list this 12th day of February, 1997.

Joel Shifman/dlp

Joel B. Shifman, Esquire
Maine Public Utilities Commission
242 State Street
Augusta, Maine 04333-0018



BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Access Charge Reform	)	CC Docket No. 96-262
Price Cap Performance Review For Local Exchange Carriers	)	CC Docket No. 94-1
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
Usage of the Public Switched Network By Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF THE

MAINE PUBLIC UTILITIES COMMISSION

Joel B. Shifman, Esquire
Maine Public Utilities Commission

242 State Street
18 State House Station
Augusta, Maine 04333-0018

February 12, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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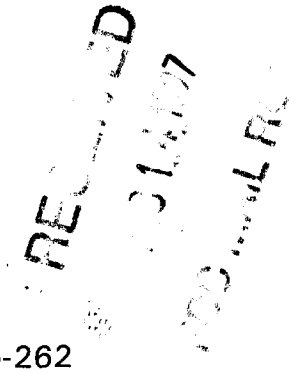

In the Matter of	)	
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Transport Rate Structure and Pricing	)	CC Docket No. 91-213
Usage of the Public Switched Network By Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF THE

MAINE PUBLIC UTILITIES COMMISSION

In its initial comments the National Association of Regulatory Utility Commissioners at p.10-13 as well as numerous other commenters, addressed the possibility of recovering the existing common line charge on a basis other than a minute-of-use charge. The Maine Public Utilities Commission is currently considering similar issues. Attached to these comments is a copy of the order entered by the Maine Commission in our state docket considering common line recovery issues. In our comments in CC Docket No. 96-45, we supported the recovery of common line costs through flat charges made to interexchange carriers. We continue to support that position.

Respectfully submitted,
for the Maine Public Utilities Commission

Joel B. Shifman

Certificate of Service

I, Joel B. Shifman, hereby certify that on this 12th day of February, 1997, copies of the foregoing reply comments of the State of Maine Public Utilities Commission in the above docket were served by first class mail, postage prepaid, to the parties listed on the
attached service list.

Joel B. Shifman

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-526

October 24, 1996

PUBLIC UTILITIES COMMISSION
Amendment of Chapter 280, Provision of Competitive Telecommunications Services

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and HUNT, Commissioners

TABLE OF CONTENTS

I. INTRODUCTION

This rulemaking contains two proposals. The first is a comprehensive revision of Chapter 280. The alternative proposal would retain the existing access charge structure of Chapter 280 and amend it, as an interim measure, to reduce access charges.

The first proposal has two objectives: to revise the access rate structure for interexchange telephone competition and to reduce the overall level of those rates. Access charges are those charges paid by interexchange providers (IXPs) to local exchange carriers (LECs) for the costs incurred by local exchange carriers to complete calls to or from the IXPs' networks. We also propose to simplify the initial approval process and the regulation of interexchange carriers doing business in Maine.

While the first proposal also addresses some local exchange competition issues, primarily the processing of applications for entry into that market, we do not at this time propose to address two other important issues relevant to local exchange competition: the access charges that IXPs should pay to competitive local exchange carriers (CLECs), and the amount that incumbent LECs (ILECs) and CLECs should pay to each other for the local interconnections that are necessary to implement local exchange competition.

These proposed changes should reduce the overall level of access charges paid by interexchange providers, but maintain the parity among all interexchange providers (and, through retail rates, their customers) in what they pay for the use of the network that is largely built by and maintained by the existing local exchange carriers.

Specifically, the proposed rule would:

- split the charge that is presently known as the "common line charge" into its two components:
  - an interim declining charge that will provide support for the currently embedded costs of transport and switching facilities for interexchange service (the facilities that run between local switches and toll switches, between toll switches and the toll switches themselves), but only to the extent that those embedded costs exceed the total element long-run incremental costs recovered in other access rate elements from IXPs. This amount, a significant portion of the current common line charge, will be established as of a fixed date and will be reduced to zero over

time as the facilities included in the charge are depreciated. Both this charge and the one described below will be assessed on total IXP retail billings.

- a charge that ensures continued support by IXPs and their customers for the "common line" costs, i.e., the facilities that run between a local switch and business and residential consumers, primarily the "loop." Those facilities, although "local" in their location, are used to carry interexchange (toll) traffic as well as local traffic; hence, they are "common" facilities.

- Both of the wholesale charges described above are implicitly included in the toll rates paid by retail toll customers of the ILECs. The charges ensure that other entities providing interexchange service, and their customers, will provide an equivalent level of support for facilities that the ILECs prudently put in service. IXPs and their customers use all of the "common line" facilities and most of the interexchange transport and switching facilities provided by the ILECs.

- Nevertheless, principles of economic efficiency demand that the price of those transport and switching facilities actually used by the IXCs be set at forward-looking economic cost and, in the longer term, that all providers of interexchange service should recover any costs of their transport and switching facilities that are above that level only from their retail customers.

- Under the present rule, the common line charge is a per-minute charge. Because NYNEX's retail toll rate structure is highly "tapered," with large discounts for high-use customers, it has been necessary to design an access charge structure with similar characteristics. The practical effect is that IXPs' retail toll rate structures must strongly resemble the retail toll structure of the ILECs.

- The proposal would untie any link between the ILECs' and IXPs' retail toll structures. Instead of per-minute charges with volume discounts, IXPs will pay a percentage of their retail billings. IXPs will be free to establish their own price structures and, to a certain extent, their overall price levels.

The alternative proposal would leave present Chapter 280 virtually intact but, on an interim basis, would simply reduce the overall level of access charges paid by IXPs. The Federal Communications Commission (FCC) is presently considering both interstate interexchange access and universal service support issues. FCC plans might have a significant impact on state policies. Accordingly, it may be sensible in the short term to adopt an interim access charge plan. The alternative proposal is discussed in greater detail in Part IV of this Notice.

Parts II and III below describe the first proposal.

II. REORGANIZATION

We propose to reorganize Chapter 280 to provide a more logical order of sections and to make the chapter easier to understand and use. Whole and partial sections have been moved and rearranged. Some whole sections and partial sections have been eliminated. As before, section 8 is the section that contains the core of the rule, access charge structure, but it is completely reorganized. The following table summarizes the reorganization and other changes to the rule.

Current §/sub-§	Title/Subject Matter	Proposed §/sub-§	Proposed Title/Subject Matter	Proposed Changes
1	Purpose	1	Purpose	revised
2	Definitions	2	Definitions	
3	Applicability	3	Applicability	no substantive changes
4	Approval required	4	Approval for providing competitive services	reorganized; simplified; informational requirements deleted and added
5	Interexchange competition	various	see below	
5.A	General	-----	-----	eliminated as superfluous
5.B.	Continued Authority contingent on payment of access	8(A)		no change
5.B	Blocking of unauthorized service	7	same	no change
5.B	charge for unauthorized service	8(G)	charges for unauthorized services	expansion to reporting

Current §/sub-§	Title/Subject Matter	Proposed §/sub-§	Proposed Title/Subject Matter	Proposed Changes
5.C(1)	requirement for ILECs to provide facilities for competitors	6	same	no major substantive change
6	Joint planning for provision of interexchange facilities	-----	-----	eliminated from Chapter 280
7	Open service/network architecture	5	open network architecture; availability of services and network elements	some reorganization; procedures modified; some substantive changes
8	Interexchange access charges	8	same	completely reorganized; major substantive changes
8.A	Applicability	8(A)	payment required	additional substantive provisions
8.B	Administrator	8(F)&(G)	Access administrator; administration and collection	major substantive changes
8.C	Access charge elements	8(B)	LRIC transport and switching	major substantive changes
8.D	Special access	-----	-----	eliminated
8.E	Private line access	-----	-----	eliminated
8.F	Leakage access	-----	-----	eliminated
8.G	Prohibition of direct end-user access charges	-----	-----	eliminated
8.H	Distribution of access revenues	8(G)(5)	Distribution of 8(D) and 8(E) revenues	substantive changes; more detailed description
8.I	Growth rebate/surcharge	-----	-----	eliminated
9	Charges for OSNA	-----	-----	eliminated
-----	------	9	Local exchange interconnection charges (Reserved)	

Current §/sub-§	Title/Subject Matter	Proposed §/sub-§	Proposed Title/Subject Matter	Proposed Changes
10	Rate schedules filed by competitive providers	10	same	exemption from active regulation stated
-----	------	11	Notice to customers of rate increase	new
11	Commission review of LEC decisions	15	same	minor non-substantive changes
12	Reports	12	Reports and records	exempts IXPs from annual report requirement
-----	-----	13	Waiver of §§ 707, 708; notice	new
13	Discontinuance of service; approval required	14	Applicability of other statutes	adds references to other statutory approval requirements applicable to all telephone utilities
14	Waiver	16	Waiver of provisions of rule	no change

III. DISCUSSION OF PROPOSED CHANGES TO EACH SECTION

§ 1. Purpose

This section is modified to reflect the purposes of the rule as revised.

§ 2. Definitions

This section contains several new and several revised definitions that define various types of interexchange and local telecommunications providers. These are necessary because various substantive provisions in the proposed rule apply in different ways to various classifications of telecommunications providers. We describe here the various categories from most to least inclusive.

"Telecommunications provider" (§2(R)) is the most inclusive category. It includes all of the categories describes elsewhere in the section, i.e., all interexchange and local exchange providers. It also includes entities that are public

utilities and those that are not, but which nevertheless must pay access charges pursuant to this rule.

"Interexchange provider" (§2(H)) is the broadest category on the interexchange side. It includes "interexchange carriers," "switchless interexchange resellers," and local exchange carriers that also provide interexchange services. An "interexchange carrier" (IXC) (§2(G)) is facilities-based, i.e., it provides interexchange service using its own facilities. The proposed definition includes entities that are defined by the FCC as "interexchange resellers" because those entities use lines or special access facilities that they control through leasing. A "switchless interexchange reseller" is an entity that has no switching capability of its own and simply resells the services of an IXC. The distinction between facilities-based and switchless IXPs is critical for the reporting of retail and wholesale billings and the assessment of the common line and embedded transport, switching charges contained in section 8, which are based on *retail* billings. Some IXPs may not be public utilities as defined by Maine law; nevertheless, all IXPs that provide retail intrastate service are subject to the access payment requirements of section 8. Finally, an "underlying interexchange provider" (§2(T)) is any IXP (including both IXCs and switchless interexchange resellers) that sells services to a switchless interexchange reseller.

On the local side, the broadest category of providers is "a local exchange carrier" (LEC) (§2(L)). Within that category are "incumbent local exchange carriers," "competitive local exchange carriers," and "local resellers." "Incumbent local exchange carriers" (ILECs) (§2(E)) are those LECs that were providing service on February 8, 1996, the effective date of the federal Telecommunications Act of 1996. In Maine, the incumbent LECs are New England Telephone and Telegraph Company d/b/a NYNEX and the 23 independent telephone companies (ITCs) that were providing local exchange service on that date. "Competitive local exchange carriers" (CLECs) (§2(C)) are defined as those local exchange carriers that are not ILECs. Within that category are CLECs that provide service using facilities they control, either by owning or leasing them, by purchasing unbundled network elements from an ILEC, or by purchasing local service (bundled) from an ILEC at a wholesale rate that reflects the difference between the ILECs' retail rate and the costs it avoids by providing the service at retail. A CLEC owning or controlling facilities (including by leasing) is capable of providing interexchange access services to IXPs. Because CLECs that only purchase out of a wholesale tariff of an ILEC have no facilities, they are not capable of providing interexchange access. Section 8, the provision governing the payment (by IXCs) and distribution (to LECs) of access charges, distinguishes between ILECs and

CLECs for a variety of purposes. See the detailed discussion under section 8 below.

Section 2(D) defines "Forward-Looking Economic Cost," the basis for pricing of the access rates contained in section 8(B) of the rule. Included within the definition are the two major components of forward-looking economic cost: definitions of "Total Element Long Run Incremental Cost" (TELRIC) of a network element or facility, and "Reasonable Allocation of Forward-Looking Common Costs." The proposed definition is intended to be substantively identical to that recently adopted by the Federal Communications Commission for local interconnection, and is discussed in greater detail in Part III. § 8.B.2 below.

Several other new definitions are included in section 2. These include: common line, interexchange access, loop and operator services. Those definitions are used in various places in the rule, particularly in section 8, and require no further explanation here.

§ 3. Applicability

Proposed section 3(A) expands the applicability of the rule to all competitive telecommunications services. At present, the rule applies only to interexchange services. Proposed subsection (B) restates, without modification, the fact that the rule does not apply to the provision of local service by customer-owned coin-operated telephone (COCOT) providers. The certification and provision of local service by COCOTs is addressed in Chapter 250.

§ 4. Approval Required

Consistent with the change to section 3, we propose that section 4 apply to applications for competitive local exchange service as well as to applications for competitive interexchange service.

As at present, proposed subsection A states the findings that the Commission must make in order to grant a certificate of public convenience and necessity pursuant to 35-A M.R.S.A. §§ 2102 and 2105(A). Proposed subsection B (approval for additional service or service area) simply restates, without substantive modification, the last paragraph of existing subsection A. Proposed subsection C (presently subsection B) states the contents of a prospective telecommunication provider's application to provide service.

We propose to eliminate or simplify some of the findings required by present subsection A, consistent with the nature of a competitive market. In proposed subsection C (presently subsection B), we would eliminate the need for applicants to provide certain information that is presently required, as unnecessary for the processing of the applications to provide service, for the findings of subsection A, or for the needs of a competitive market. These include: the procedural provisions in paragraph 1 concerning the need to file certain material if it is already on file and to determine the adequacy of an application (the former has not been used and the latter is handled informally); statements concerning facilities that the applicant intends to use (some of these requirements are retained only for applicants intending to use access other than feature group B); and financial reports. The proposed revision modifies certain information requirements and adds requirements that the applicant provide information concerning any investigations that are pending in other jurisdictions; information about whether the applicant intends to offer operator services; and, for switchless interexchange resellers, information about the identity of their underlying carriers, and information designed to ascertain whether the applicant is indeed a switchless interexchange reseller. The latter information is necessary because the proposed section 8 provides an exemption from access charges, to avoid double payment of access charges, for services that are resold at wholesale by one interexchange provider to another. (Much of the information listed above is currently being required pursuant to letters sent by the Administrative Director to all perspective applicants for interexchange service.)

The continued requirement for the description of proposed facilities and services that an IXP will use other than Feature Group D is necessary because Feature Group A and Feature Group B facilities and special access and private line facilities are often used for mixed interstate and intrastate traffic. A LEC providing Feature Group D service is able to measure interstate and intrastate traffic, but is not able to do so for other means of access. For those other means, the reporting and the payment of intrastate usage essentially relies on the honesty of the interexchange provider, tested where circumstances warrant by audits.

§ 5. Open Network Architecture; Availability of Services and Network Elements

Section 5 is nearly identical to present section 7 with two substantive changes. Section 5 describes a process by which other telecommunications providers, customers, or any other person may request a service, access to network facilities or network elements themselves from any telecommunications provider.

If the telecommunications provider will not or cannot provide the requested service, access or element, section 5 describes a further process by which the requestor may obtain review of that decision by the Commission staff and, ultimately, the Commission. We propose three substantive changes. First, the present rule allows persons to make requests to LECs; we propose to expand the rule so that persons may request services, access or elements from any telecommunications provider subject to the jurisdiction of the Commission. Second, consistent with the Telecommunications Act of 1996 and the evolution of policy generally, a person may request "network functions or elements, including the unbundling thereof," in addition to the items named in the present rule. Third, the rule is clarified to state that any request made for a service, for access or for a network element that is made to any telephone utility managerial, marketing or business office personnel will be considered a request under this section and will potentially initiate the processes under this section.

§ 6 A. Present Section 6: Joint Planning for Provision of Interexchange Facilities

We propose to delete present Section 6. Its requirements for joint planning among competitors or potential competitors are arguably inconsistent with a competitive market. Moreover, the provision has been used sparingly, despite the fact that LECs have generally complied with the requirements to provide notice of construction plans to other LECs and to larger interexchange carriers. By proposing to eliminate this section in its present form, we are not indicating any lessening of concern about planning for adequate network facilities or service quality. Recent experience has shown that the modern fiber-optic network is somewhat fragile; accidents caused by motor vehicles may result in major network outages for extended periods of time. Recent events of this type may demonstrate the need for greater network redundancy (parallel and back-up routes) and better network planning.

It is not clear that present section 6 adequately addresses the current or future situations. For example, it addresses only joint planning and not planning by a single utility. Accordingly, while we propose to repeal present section 6, we intend to continue our vigilance of service quality, both through the service quality mechanism contained in the current alternative form of regulation (AFOR) for NYNEX and otherwise.

B. Proposed Section 6: Provision of Facilities by Local Exchange Carriers

This section is derived from present Section 5, subsections C and D. There are two proposed substantive changes. First, under the present rule, an interexchange carrier may request access facilities from an "affected carrier," i.e., an incumbent local exchange carrier (ILEC). Under the proposal, any telecommunications provider (interexchange and local) may request "access and interconnection" facilities from any LEC (both ILECs and CLECs). This section states the general obligation, under the federal Telecommunications Act of 1996, of local carriers to provide sufficient access and interconnection facilities to other telecommunications providers, and states qualifications to that policy that are contained in the present rule.

The second change is in section 6, subsection B(2) (presently subsection C(2) of section 5). The present provision states a policy that if an IXP plans to offer "competitive services from an exchange which has Extended Area Service (EAS) calling to another exchange," the provider will be required to obtain feature group D access from the LEC, but, if feature group D access is not available, the provider must pay a reasonable portion of the LEC's capital costs. The proposed revision would require a competitive telecommunications provider to pay a reasonable portion of the LEC's capital costs for any facilities that the competitive telecommunications provider causes to become overloaded or exhausted.

§ 7. Unauthorized Interexchange Service; Blocking of Unauthorized Traffic

Proposed section 7 is essentially identical to the portion of existing section 7 that requires blocking of unauthorized intrastate traffic. The remainder of existing section 7, which addresses the rate that unauthorized providers of intrastate interexchange service must pay when their traffic is not or can not be blocked, has been transferred to section 8(G)(1).

§ 8 Interexchange Access Charges

A. Introduction

In this introduction, we describe the nature of the modern telecommunications network in Maine and the nature of the costs of that network. We hope this explanation will aid in the understanding of the philosophy and economic rationale of the proposed rule.

1. The Network and How Interexchange Telephone Service Is Delivered

At its simplest level, the telephone network that is used for interexchange service in Maine can best be described by tracing an interexchange (toll) call. Assume that a telephone subscriber in Rumford places a call to telephone subscriber in Damariscotta. The subscriber in Rumford is a customer of NYNEX (New England Telephone and Telegraph Company d/b/a NYNEX) for local service, i.e., for calling to Rumford and areas within Rumford's extended area service (EAS). At present, Rumford customers, like all other customers in Maine, may obtain local service from only one local telephone company (local exchange carrier (LEC)). The customer does have a choice among long-distance (interexchange) companies, but for the initial purpose of the example, we will assume that the customer uses NYNEX. Indeed, if the customer simply dials the 7 digit number of the called party, the customer will automatically receive the interexchange toll service offered by the customer's local company, in this case NYNEX. The Rumford customer's call is first routed over a NYNEX "loop" to the NYNEX local switch (also called a central office or wire center) for the Rumford exchange. Loops are those facilities (utility poles and wire) that run from the local switch to various customer locations. While loop facilities can and are configured to allow sharing of some facilities by customers, for the sake of simplicity, it can be assumed that each customer is assigned a loop dedicated solely to that customer's use.

If the customer were calling another number in Rumford, the call would be switched at the local switch and sent out over another loop to the other Rumford customer. However, in the case of the call to Damariscotta, the call will be sent by the Rumford switch over a NYNEX trunk to a NYNEX toll switch, mostly likely in Lewiston.

Trunking facilities (also called transport facilities) are used in common for all calls that are not routed through "private lines." They, along with switches, are the most "public" part of the "public switched network." Unlike loops, they are not dedicated to a particular customer. Thus, while the local switch in Rumford has about 5,700 loops coming into it from the Rumford exchange, telephone company engineers know that not all of those customers will be placing a call that goes out of the exchange at once. Therefore, it will be necessary to provide many fewer than 5,700 trunking circuits from Rumford to various other exchanges, including the toll switch in Lewiston. In the case of the call we are describing from Rumford to Damariscotta, that call will be routed from the Rumford switch over any trunking circuit that is not in use.

From the toll switch in Lewiston, the call is routed over other trunking facilities to the local switch in Damariscotta. The call might be routed in a variety of ways from Lewiston to Damariscotta, e.g., directly (without further switching) or through the Portland or Augusta toll switches. The actual routing may depend on whether trunking facilities are reaching their level of capacity. Damariscotta is served by Tidewater Telephone Company (Tidewater), an independent telephone company (ITC). At the border between the Wiscasset exchange of NYNEX and the Damariscotta exchange of Tidewater, the call is transferred between the two companies' trunking facilities.

NYNEX and Tidewater provide the telephone service described above jointly (i.e., in combination with each other rather than competitively). At least at present, neither company provides originating or terminating exchange toll services in the other's service territory. Unless the call is a collect call, the customer placing the call in Rumford will pay NYNEX for the call; the proceeds are split among the companies by a process called settlements. If the call were placed by the customer in Damariscotta to the customer in Rumford, the customer in Damariscotta would pay Tidewater Telephone Company for the call, but the proceeds would still be distributed through the settlements process.

The caller also might place the call to another area in which NYNEX was the local exchange carrier or to another area in which one of the other 22 independent telephone companies is the exclusive local exchange carrier.

Despite the fact that local interexchange carrier franchises are at present exclusive, the customer in Rumford does have competitive choices for the interexchange call to Damariscotta. The customer could have placed the call over any of several interexchange providers (IXPs) that have been granted the authority to provide interexchange service in Maine. For example, the customer might have chosen to use MCI. Unlike interstate calling, there is at present no "presubscription" for interexchange service, although NYNEX has indicated that it will implement intrastate presubscription by May 1997.

To place an interexchange (toll) call at present that uses a carrier other than the NYNEX-ITC combination, a caller must dial a carrier identification code (CIC) (10XXX or a 700 number). MCI's CIC is 10222. If the customer in Rumford dialed 10222 + the number in Damariscotta, the call would be "carried" and billed to the customer by MCI. However, the call would follow the same routing over the customer's loop to the NYNEX switch in Rumford and over NYNEX trunks to the Lewiston toll switch. It would then be carried over NYNEX trunks to the

Portland toll switch. At Portland, the call would be transferred to MCI's "point of presence" (POP). MCI would then carry the call over its own facilities (which might be owned by MCI or leased from another carrier such as AT&T) to MCI's switch in Boston or elsewhere. MCI's switch would receive the essential billing information (the originating number and the terminating number) and send the call over a trunk to MCI's POP in Portland. The call would then be transferred back to NYNEX in Portland and sent over NYNEX and Tidewater trunks to Damariscotta.

For the example given, the call placed with MCI would be carried over NYNEX facilities for the same or a longer distance than if the call were placed directly with NYNEX and would be carried over the same amount of Tidewater Telephone Company facilities. At a minimum, calls (e.g., those that would be routed through the Portland toll switch in any event) are likely to use at least the same amount of NYNEX and ITC facilities as a call placed directly with NYNEX or an ITC. In the example given, the only facilities actually provided by MCI are those that were necessary for MCI to collect the billing information. MCI has evidently found it to be more efficient to maintain a regional switch in Boston and to transport its Maine intrastate traffic to Boston and back than to maintain a switch in Portland.

The example given is typical of calls carried by interexchange providers in Maine. Of all of the interexchange carriers, only AT&T has more than one POP. AT&T maintains POPs in Portland, Lewiston, Augusta and Bangor and transport facilities (trunks) in between. Thus, AT&T may actually use facilities it owns or leases to carry some of a call that is placed, for example, between Biddeford and Presque Isle.

The customer in Rumford might also chose to obtain intrastate long-distance service from a "switchless reseller." About 100 switchless resellers have been certified to provide service in Maine. Let us assume that the customer has signed up for service with XYZ Company (a fictitious name). As with any interexchange service provided by a non-LEC, the customer may obtain non-LEC service only by dialing a code. For this example, we will assume that the customer has been instructed by XYZ to use the code 10222, i.e., MCI's code. In fact, the call will be carried by MCI (actually by NYNEX, MCI, NYNEX and Tidewater); the routing will be identical to the call placed with MCI. However, the customer will be billed by XYZ at rates that are likely to be slightly different than MCI's. XYZ does not carry or process the call in any way. XYZ simply purchases service from MCI's intrastate retail schedule of rates. MCI's retail rate schedule contains a quantity discount. MCI provides a single bill to XYZ (containing the billing information

XYZ needs to bill its customers), and XYZ then bills its customers directly or has a billing arrangement with a local exchange carrier to bill its customers.

As can be seen by the examples above, LEC facilities continue to be used and LECs continue to incur costs whether a customer has chosen a LEC or a competitor to "carry" the call. Even if competing IXCs should decide to deploy their own transport facilities in a much greater quantity than they have over the past eight years, LECs (whether incumbent LECs or competitive LECs) will doubtless carry both the beginnings and ends of most calls, i.e., those portions carried over loops.

2. The Nature of Interexchange Costs

The cost of providing telephone service has been declining for at least the past decade. The reason for this declining cost is primarily technological, particularly the use of digital switching and fiber optic transmission. The cost of building an additional increment of capacity today is generally less expensive than the cost of adding that increment in the past. Moreover, the cost of adding that increment is even likely to be less than the current cost of maintaining and supporting the older equipment that is on a telephone company's books, even though that property has been partially depreciated. Accordingly, the average cost of providing a given unit of telephone service exceeds the forward-looking (marginal, or incremental) cost of providing that same unit or increment. It is this difference between forward-looking and embedded costs that gives rise to difficult issues of pricing policy.

3. Present Retail and Access Recovery of Costs

It has been our policy since the implementation of Chapter 280 in 1989 that the switching and transport facilities that a LEC makes available to its competitors should be priced at the LEC's incremental cost. As explained more fully below, the goal of that policy is to promote economically efficient pricing decisions by all IXPs. We propose in this rulemaking to continue the policy.

Nevertheless, retail rates generally are set to recover embedded, not incremental, costs. Even under price-cap regulation, e.g., the NYNEX alternative form of regulation (AFOR), the starting point for rates under the AFOR was NYNEX's embedded revenue requirement.

The difficult issue for interexchange access charge policy is determining to what extent and how to recover the difference between (1) the incremental cost that carriers

using transport and switching facilities of the LECs pay in incremental-cost based rates (or avoid by providing their own facilities) and (2) the average cost (embedded cost) of providing those facilities. As noted above, that differential is automatically recovered in retail interexchange (toll) rates paid by the retail customers of LECs because those rates are based on embedded cost. Present Chapter 280 requires the common line charge, after deduction of the costs recovered through incremental rates, to mirror the ILECs' retail toll rates. The present common line charge therefore does not recover the difference between the LECs' incremental and embedded costs from wholesale customers (IXPs). As discussed in detail below, we propose to continue the policy, in substantially modified form, that IXPs should continue to pay embedded costs . However, for transport, switching and operator service costs, rates should be reduced over time so that, once the differential between embedded and incremental cost is reduced to zero, the differential rate will disappear and wholesale customers will pay only the incremental cost rates.

For this first proposal (as for the alternatives described in Part IV below), we request comment about an effect it may have on the alternative form of regulation (AFOR) we have adopted for NYNEX, effects under the existing AFOR rules, its relation to AFOR pricing rules for retail interexchange rates, and whether any new pricing rules may be necessary.

B. Proposed Section 8: Explanation of Individual Subsections

1. Subsection A: Payment and Reporting Required

Proposed paragraph 1 of this subsection A is based on existing subsection A of present Section 8, but states the requirement of who must pay access charges in more general terms, i.e., by all interexchange providers (IXPs), including local exchange carriers that provide interexchange service, switchless interexchange providers, and including any IXP that is not a public utility. The specifics of what entities are interexchange providers is left to the various definitions of Section 2. The policy that access charges must be paid by interexchange providers that are not public utilities is contained in the present rule. The present rule applies to "all" competitive providers and thus literally applies to switchless interexchange resellers as well as to facilities-based interexchange carriers, thus requiring double payment of access for the same calls. The Commission has resolved this problem by granting exemptions from payment of access charges by switchless interexchange resellers, provided that a switchless reseller's

underlying carrier is certified and pays access. In the proposed rule, we continue to adhere to the principle, established through the granting of the waivers, that double access charges should not be paid. However, for the reasons explained below in section B(7)(c), we believe that the present system has not worked. Therefore, we propose in this rule to require all interexchange providers, including switchless interexchange resellers, to pay access, but to provide the exemption designed to prevent double payment to the underlying interexchange carriers by exempting wholesale sales to switchless interexchange resellers.

Proposed paragraph 2 of subsection A sets forth the consequences for failing to pay access or failing to comply with reporting obligations. The consequences for failure to pay access are derived from present sections 5(B).

Proposed paragraph 3 provides that payment of interstate access does not excuse the payment of intrastate access. That rule is presently in section 8(A)(1).

Proposed paragraph 4 is necessary for the administration of the wholesale billings exemption described above.

2. Subsection B: Incremental Rates for Switching, Transport and Operator Services and Other Traffic-Sensitive Functions

The rates for transport, switching, operator services and other traffic-sensitive functions should continue to be set at forward-looking economic cost. As described in the definitional section 2(E), the major component of forward-looking economic cost is "total element long-run incremental cost" (TELRIC). The proposed definition is intended to be substantively identical to that adopted by the FCC (for local interconnection) on August 8, 1996, in its Interconnection Order. *In the Matter of Federal Communications Commission, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), ¶¶ 674-715; 47 C.F.R. §§ 51.505 and 51.511 ("Interconnection Order"). We have reviewed the FCC definition and find it reasonable.[1]

[1]We do find a semantic problem with the FCC's definition of TELRIC that we believe makes the definition confusing and difficult to understand. The FCC has defined TELRIC "of an element" as "the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element . . . ." We propose to replace that

Similar to the policy in the present rule (present section 8(C)(2) and (3)), which states that rates for transport and switching be set at long-run marginal cost. Although incremental cost and marginal cost differ, they are both measures of forward-looking rather than historical costs.[2]

For the rates calculated by NET that are now in effect, NET used total capacity of the given increment rather than a realistic level of demand, thus producing what are probably unrealistically low long-run incremental costs. The FCC and proposed definitions both require that the incremental cost be divided by a reasonable projection of expected demand. The proposed definition is generally based on and consistent with the ruling made by the Commission in *Public Utilities Commission, Investigation Into New England Telephone Company's Cost of Service and Rate Design*, Docket No. 92-130, Order at 21-22 (April 13, 1994).

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language with "the total quantity of all costs inputs to that element that are either directly attributable to or reasonably associated with its cost . . . ."

We intend that the substantive meaning of these two phrases be identical.

We have clarified the FCC definition in two other respects. First, the requirement to use "forward-looking cost of capital" states that the forward looking cost of capital consists of projections of the cost of equity and the cost of debt. (§2(D)(1)(a)(ii)). Second, the FCC definition of "forward-looking economic cost per unit" requires a denominator equal to the "likely" demand during "a reasonable measuring period." We propose to add the phrase "which generally will be a period that includes peak demand." (§2(D)(3)). In most cases, there are no incremental costs during off-peak periods.

[2]Both incremental and marginal cost measure the cost of additions to the telephone network rather than the embedded or average cost of the network. Marginal cost measures the cost of meeting the next unit of output or demand, e.g., the cost of adding an access line. Incremental cost measures the cost of meeting a stated increment of output demand, either what is necessary to satisfy a particular demand or, in some instances, the amount that is practical to add. For example, cable may be available only in certain capacity sizes and the smallest capacity size may be far larger than one unit of capacity that may be needed by a particular customer, e.g., one circuit.